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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

National institutions for the promotion and protection of human rights

Report by the Secretary-General submitted in accordance with Commission on Human Rights resolution 1994/54

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Introduction

1. In paragraph 11 of resolution 1994/54, entitled "National institutions for the promotion and protection of human rights", adopted at its fiftieth session, the Commission on Human Rights requested the Secretary-General to prepare a report, to be submitted to the Commission at its fifty-first session, drawing on comments by States and national institutions, concerning possible forms of participation by national institutions in United Nations meetings dealing with human rights.

2. Pursuant to that resolution, on 30 March 1994 the Secretary-General sent a letter to national human rights institutions and, on 16 May 1994, a note verbale to Governments, requesting them to transmit their comments and suggestions concerning possible forms of such participation by national institutions.

3. As of 15 December 1994, replies had been received from the Governments of the following countries: Angola, Argentina, Croatia, Ghana, Iraq, Kuwait, Libyan Arab Jamahiriya, Mauritius, Pakistan, Uganda and Zimbabwe. Replies had also been received from the following national institutions: Observatoire national des droits de l'homme (Algeria), Canadian Human Rights Commission (Canada), Commission nationale consultative des droits de l'homme (France), National Human Rights Commission of India, National Human Rights Commission of Mexico, Human Rights Commission of New Zealand and Comité superior des droits de l'homme et des libertés fondamentales (Tunisia).

4. The Secretary-General took into account the information, observations and suggestions specific to each State and national institution only to the extent that it met the request contained in the note verbale and the letter, in accordance with paragraph 11 of resolution 1994/54.

5. The replies received from national institutions demonstrated that they are for the most part aware of the important part they play and can play in the future in promoting and protecting human rights and fundamental freedoms. National institutions also attach great importance to the interaction between their activities at the national level and those of the United Nations human rights bodies.

6. This document is intended to provide a digest of the replies submitted by States and the comments and suggestions made by national institutions for the promotion and protection of human rights concerning possible forms of participation by national institutions in United Nations meetings dealing with human rights.

7. The Principles relating to the status of national institutions, adopted by the General Assembly in resolution 48/134, serve as a guideline for the definition and mode of operation of national institutions.

I. VIEWS SUBMITTED BY STATES

1. Croatia

8. The Government of Croatia attaches importance to the contribution of the Ombudsman to defending and protecting citizens' rights. In particular, it would like the Office of the Ombudsman to participate in United Nations meetings on human rights. Without identifying the form which such participation should take, it is prepared to agree to any form of cooperation identical to those that the United Nations has established with other national institutions.

2. Ghana

9. The Government of Ghana favours an independent status for national institutions that will be participating in United Nations meetings dealing with human rights. The following are its arguments:

(a) National institutions provide Governments with all the human rights information that the Governments might need; they are also responsible for advising the Government on human rights issues and States' duties under international agreements to which they are parties.

(b) National institutions are familiar with the human rights situation in the field; they are therefore in a good position to contribute positively to the work of United Nations human rights bodies.

10. Direct participation by national institutions in United Nations meetings will help strengthen and ensure their institutional independence. Their contributions to discussions of issues raised at United Nations meetings might be valuable.

3. Iraq

11. The Government of Iraq states that it attaches importance to participation by national institutions in United Nations meetings dealing with human rights. Citing paragraph 36 of the Vienna Declaration and Programme of Action concerning national institutions, which stipulates that "The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities [and] their role in remedying human rights violations", it states that it is in favour of participation by national institutions in United Nations meetings dealing with human rights. It wishes to see regular and effective participation by these institutions, in coordination with the Governments concerned. To that end, it suggests granting national institutions observer status.

12. The Government of Iraq endorses the content of paragraph 86 of the Vienna Declaration, which recommended that "representatives of national institutions for the promotion and protection of human rights convene periodic meetings under the auspices of the Centre for human Rights to examine ways and means of improving their mechanisms and sharing experiences", since it

believes that such meetings will provide an opportunity for those institutions to exchange experience and improve their operational mechanisms in a manner conducive to furthering their efforts to improve the protection of human rights.

4. Kuwait

13. Without making any suggestions, Kuwait states that it considers the contribution of national institutions for the promotion and protection of human rights to be very important.

5. Libyan Arab Jamahiriya

14. The Government of the Libyan Arab Jamahiriya appreciates the significant role that national institutions play in United Nations meetings dealing with human rights, in both the preparatory work therefor and the meetings themselves, in view of their expertise and competence in that area. Bearing in mind the fact that such national institutions are non-governmental organizations, their powers and competence should be in keeping with the provisions of Article 71 of the Charter of the United Nations, which empowers the Economic and Social Council to "make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its [the Council's] competence".

15. The Government of the Libyan Arab Jamahiriya therefore suggests that such institutions should have observer status; their participation should be confined to the expression of opinions and the provision of technical advice. The competence of such institutions should not extend to decision-making, the drafting of reports, activities likely to affect the sovereignty of Member States or criticism of the latter's positions in regard to the human rights issues dealt with at United Nations meetings.

6. Uganda

16. In Uganda, there is a human rights desk in both the Ministry of Foreign Affairs and the Ministry of Justice; they coordinate the promotion of human rights protection in the country. The Ministry of Foreign Affairs serves as liaison between the Government and international institutions for the protection of human rights. The Government of Uganda believes that national non-governmental organizations should satisfy the Commission on Human Rights as to their credibility with regard to the protection of human rights in the country.

II. COMMENTS AND SUGGESTIONS SUBMITTED BY NATIONAL INSTITUTIONS

1. Observatoire national des droits de l'homme (Algeria)

17. The Algerian national institution for the protection and promotion of human rights, the Observatoire national des droits de l'homme, has made the following comments and suggestions:

(a) National institutions whose establishment, make-up and mode of operation are in accordance with the relevant resolutions of the United Nations General Assembly, in particular resolution 48/134 of

20 December 1993, may be admitted, at their request, to attend and participate as observers in all United Nations activities and meetings dealing with human rights.

(b) A request for observer status submitted by a national institution must be endorsed by an assenting opinion from the accredited representatives of the State in question to the United Nations Office at Geneva. However, in certain extreme situations, the request should be admissible if the State concerned refrains from any action suggesting that it might be opposed.

(c) It is understood that any statement made or position taken in United Nations sessions and meetings dealing with human rights by a national institution cannot be regarded as committing the State or Government of the country of the institution in question. In that connection, the pluralistic make-up of the national institution and the independence which it is supposed to enjoy compel a distinction to be made between the opinions expressed by the national institution and the statements made and positions taken by the accredited representatives of the State in question, which alone is competent to express its official positions.

18. In the view of the Observatoire national des droits de l'homme, the Coordinating Committee on national institutions mentioned in paragraph 7 of resolution 1994/54 can continue to act as a body for study and cooperation among national institutions and between such institutions and the other United Nations human rights bodies. The Observatoire suggests that the Committee should draw up rules of procedure enabling it to act as an instrument for facilitating contacts and relations between national institutions and the appropriate United Nations structures and bodies dealing with human rights.

19. Without questioning the principle of universality underlying all of the International human rights instruments, which was illustrated for the national institutions by the adoption of a group of standard principles called the "Paris Principles" (Principles relating to the status of national institutions for the promotion and protection of human rights; see General Assembly resolution 48/134 of 20 December 1993, annex), the Observatoire suggests that some flexibility should be allowed in order to take account of differences in the constitutional tradition of certain States and of the special features of their judicial practice or their system of public administration. This means that an attempt should be made to avoid the establishment of a rigid mould that would impede or check the very positive trend observed in the last 10 years or so in the establishment and strengthening of national institutions throughout the world.

2. Commission nationale consultative des droits de l'homme (France)

20. The French Commission suggests participation by national institutions in United Nations meetings at two levels:

(a) The Coordinating Committee of national institutions would speak, through its coordinator or a member mandated by all its members, on questions of general interest concerning which consultations have been held. It would

have the same status as non-governmental organizations in consultative status with the Economic and Social Council; it would be an observer in forums where non-governmental organizations with consultative status are not present.

(b) Each institution would be able to continue to participate, in its own right, in the delegation of its State when the latter is willing to include it as a member. This would be a continuation of the current situation.

3. National Human Rights Commission of India

21. The National Human Rights Commission of India is of the opinion that national institutions should participate in the annual sessions of the Commission on Human Rights and in the meetings of the Third Committee of the United Nations General Assembly, to help examine any human rights or humanitarian items.

22. Referring to the independent nature of such institutions, the National Human Rights Commission of India suggests that national institutions should participate in meetings in their own right when the United Nations Commission on Human Rights considers an item of concern to them at its annual session, and not, as at present, from behind the nameplates of their respective States.

23. Regarding precedence, the national institutions might take the floor at meetings of the Commission after States members of the Commission, other States Members of the United Nations or States having observer status, but before intergovernmental organizations, United Nations agencies and programmes and non-governmental organizations.

24. There might be value in national institutions being allowed to take the floor every other year in the Third Committee of the General Assembly when the work of such institutions is considered, but their active presence in the Third Committee is less necessary than at sessions of the Commission on Human Rights.

4. Comité supérieur des droits de l'homme et des libertés fondamentales (Tunisia)

25. The Comité supérieur des droits de l'homme et des libertés fondamentales suggested that national institutions should have a place reserved for them and the possibility of being given the floor, either as part of their delegation or, better still, directly, as was the case during the World Conference on Human Rights (Vienna, 1993).

5. Canadian Human Rights Commission

26. Despite the fact that the important role played by national institutions in the promotion and protection of human rights has been noted in a number of resolutions of United Nations bodies and in the Vienna Declaration, national institutions do not enjoy any precise status before United Nations human rights organs. As a consequence, the representatives of national institutions can only express their views during sessions of the Commission on Human Rights as members of their countries' delegations and from their countries' desks.

This is out of keeping with the principle of the independence of national institutions as set out in the Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134 of 20 December 1993, annex).

27. Therefore, the Canadian Human Rights Commission is of the view that national institutions for the promotion and protection of human rights should enjoy a status similar to that of a United Nations specialized agency. This would mean that national institutions would have a designated area in which to sit when the Commission on Human Rights meets and that their representatives would have an opportunity to speak on human rights issues at those meetings.

28. The Canadian Human Rights Commission understands that for logistical reasons it would be impossible for every national institution to speak on each human rights issue before the Commission. It might be appropriate, therefore, for the head of the Coordinating Committee of national institutions to be designated to speak on behalf of all institutions on important matters; at the same time, some way must be sought to accommodate institutions that wish to speak on an issue of particular interest to them.

III. ANALYSIS OF INFORMATION RECEIVED

29. In the light of the information provided above and in accordance with paragraph 11 of resolution 1994/54, the Secretary-General would have liked to receive a larger number of comments from States and national institutions concerning possible forms of participation by national institutions in United Nations meetings dealing with human rights.

30. The Principles relating to the status of national institutions for the promotion and protection of human rights, adopted by the General Assembly in resolution 48/134, represent a major step forward in this process. These internationally recognized Principles should serve as basic guidelines for the establishment of national institutions for the promotion and protection of human rights. It should be mentioned that national institutions enjoyed observer status at the World Conference on Human Rights, held at Vienna in June 1993.

31. As indicated by the replies, most States are of the view that national institutions should act with complete independence and that this independence should be set forth in their constituent instrument. In other words, the institutions' sphere of competence should be defined principally from the point of view of the State's obligations under international human rights legislation. What kind of relations can a Government develop with national institutions which will lead to coordinated and effective action to promote human rights? The independence which national institutions are supposed to enjoy would in fact require separation of the State's opinions from those of the national institution. In addition, excellent communication must be established between the two in order to avoid overlapping and conflicts of competence and to ensure that opinions, recommendations, proposals and reports are taken into account at all stages of preparation of human rights

legislation. However, it seems that, today, States are increasingly involving national institutions in the drafting of documents for the promotion and protection of human rights. One example of cooperation is the reports of the Canadian Human Rights Commission and of the Canadian House of Commons on the status of disabled people. The same can be said of France and Australia.

32. Along similar lines, a large number of States feel that national institutions might participate in United Nations meetings in their own right. This would imply that these institutions are credible. However, the credibility of a national institution depends on the rank of its constituent instrument in the hierarchy of national standards. In order for these institutions to participate in United Nations meetings, it might be advisable for the United Nations to ensure that they are established either by the Constitution or by a law giving them legal status independent of the State. Their powers should also be made as broad as possible. Therefore, in view of the fact that national human rights institutions might be an important mechanism for strengthening the protection of human rights, their Charter or other constituent instrument should be thoroughly examined as a means of increasing their effectiveness in protecting human rights.

33. Given the diversity of both States and the structures and means of operation of their national institutions for the promotion and protection of human rights, two schools of thought emerge: the first favours direct participation, as was the case at the World Conference on Human Rights (Tunisia, Algeria, Canada, France), and the second favours the participation of national institutions with observer status (Libya, Croatia, Iraq).

34. The national institutions, for their part, express the wish to participate in the following:

(a) The annual sessions of the Commission on Human Rights and of the Sub-Commission;

(b) The periodic meetings of the treaty bodies;

(c) The meetings of the Third Committee of the United Nations General Assembly.

35. In addition, certain national institutions would like to participate in their own right when the Commission on Human Rights deals with an issue that interests them. They might be authorized to speak in their own name. This means that any statement made or position taken during a session or meeting of a United Nations body should not commit the Government (opinion of the Observatoire national des droits de l'homme of Algeria and the Commission nationale consultative des droits de l'homme of France). Other institutions would like to be given status similar to that of the United Nations specialized agencies (opinion of the Canadian Human Rights Commission).

IV. RECOMMENDATIONS

36. In view of the precedent set at the Vienna Conference, the following recommendations are formulated in order to guide the Commission on Human Rights in its deliberations and contribute to the adoption of any decision it deems necessary in this respect:

(a) In the event that the Commission decides that national institutions should participate in meetings of United Nations human rights bodies, it should pronounce on the conformity of these institutions' structure and operation with the Principles relating to the status of national institutions, as adopted by the General Assembly in resolution 48/134 of 20 December 1994;

(b) The Commission on Human Rights should be informed whenever a national institution is established so as to be able to accord it the appropriate status, after seeking the opinion of the Coordinating Committee of national institutions.